UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 8

ST. VINCENT CHARITY MEDICAL CENTER

Employer

and

Case No. 8-RC-17027

SERVICE EMPLOYEES INTERNATIONAL UNION, DISTRICT 1199 WV/KY/OH

Petitioner

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in these proceedings to the undersigned.¹

INTRODUCTION

St. Vincent Charity Medical Center, a not for profit Ohio corporation, operates an acute care hospital in Cleveland, Ohio, the sole facility involved in this proceeding. The Petitioner seeks to represent all of the full-time and regular part-time employees of the Employer classified as phlebotomists² by having them vote in an <u>Armour Globe</u> election to determine if these employees wish to be included in an existing bargaining unit that is presently represented by the Petitioner. See, <u>Armour and Co.</u>, 40 NLRB 1333 (1942) and <u>Globe Machine and Stamping Co.</u>, 3 NLRB 294 (1937) There are approximately 15-17 employees in the voting group sought by the Petitioner. The petition reflects that there is an existing unit of approximately 200 employees.

¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction. The labor organization involved claims to represent certain employees of the Employer. The Employer and the Union filed post-hearing briefs which have been duly considered. Employer Exhibits were also received at the hearing. Two witnesses were presented by the Employer. The Petitioner did not present witnesses.

² Throughout testimony and in Exhibit 2, the Employer refers to these employees as Phlebotomy Technicians and Phlebotomy Technicians PRN. The Petitioner also refers to PRN phlebotomists as availability employee phlebotomists.

The current collective bargaining agreement between the Petitioner and the Employer covering the existing unit has effective dates of June 1, 2009 through May 31, 2012.³ This unit was formed prior to the issuance of the Board's Health Care Rule⁴ defining the eight appropriate units that may be formed in an acute care hospital setting. The extant unit at St. Vincent does not conform to the Rule.⁵ It includes various categories of employees including LPNs, clericals, service and maintenance employees, STNAs, and various employees designated as "technicians" who work in such locations as the Emergency Room and Anesthesiology.⁶

The threshold issue for determination is whether an election may appropriately be ordered for the petitioned-for voting group of phlebotomists and PRN phlebotomists.⁷

POSITION OF THE PARTIES

The Petitioner argues that the petitioned-for voting group of phlebotomists and PRN phlebotomists is appropriate and that an election should be directed to determine whether the employees in this voting group wish to be included in the existing unit. It maintains that such an election avoids a proliferation of units because the petition does not seek to create a new and separate unit but rather would merely bring an unrepresented classification into an existing unit.

The Employer argues that the petitioned-for unit is not appropriate and the petition should be dismissed to avoid unit proliferation and piece-meal organizing drives. It maintains that regardless of whether the phlebotomists are technical or non-professional employees, record evidence demonstrates that there are numerous other technical or non-professional classifications of employees employed by the Employer that would remain unrepresented. The Employer further asserts that unless they are also included in any election ordered by the Board, these remaining unrepresented classifications would form the basis for a potential proliferation of bargaining units. In this regard, the Employer maintains that in addition to the approximately 17 phlebotomists, there are 83 currently unrepresented nonprofessional employees in 25 other classifications and 117 technical employees in 37 other job classifications. Accordingly, the Employer argues that the petition must be dismissed in order to avoid unit proliferation.

DECISION SUMMARY

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³ Employer Exhibit 30. In its brief, the Petitioner contends that the recognized bargaining unit has been largely unchanged since the 1960's.

⁴ 54 Fed. Reg. at 16347, 29 C.F.R. at Sec. 103.30(a).

⁵ At no time does the Petitioner maintain that the existing unit conforms to any of the appropriate units prescribed by the Board's Health Care Rule.

⁶ The various job classifications included in the existing unit are listed in an appendix to the petition and are found in the record in Board Ex. 1.

⁷ The Employer presented evidence and argued that phlebotomists and PRN phlebotomists are technical employees within the meaning of the Board's Health Care Rule. Inasmuch as I am dismissing the instant petition because it seeks an election in a voting group that does not conform to the Board's Rule, I need not decide whether the phlebotomists are technical employees as argued by the Employer or non-professional employees as asserted by the Petitioner. Nevertheless, I note that, on the basis of the record before me, I would find these employees are not technical employees within the meaning of the Board's Health Care Rule. <u>Southern Maryland Hospital Center, Inc.</u>, 274 NLRB 1470 (1985), <u>Middlesex General Hospital</u>, 239 NLRB 837 (1978).

I find that the petitioned-for voting group of phlebotomists and PRN phlebotomists does not conform to the Board's Health Care Rule regarding appropriate units in acute care hospitals and accordingly I shall dismiss the petition.

ANALYSIS

In issuing its Health Care Rule, the Board sought to follow the Congressional mandate to avoid the disruption caused by the proliferation of bargaining units. In order to prevent such proliferation in the setting of acute care hospitals, the Board designated eight specific units that are appropriate for collective bargaining. In applying the Rule to situations as the instant case in which there are residual unrepresented employees that are not part of an existing unit, the Board has relied on its long held principle that "all unrepresented employees residual to an existing unit be included in an election to represent them." The Board has further determined that this principle applies where the existing unit does not conform to one of the appropriate units set forth in the Health Care Rule. In **St. John's Hospital**, 307 NLRB 767 (1992), the Board declined to find appropriate a separate unit of maintenance mechanics where they would have constituted a sixth nonconforming unit of skilled maintenance employees at the hospital and would have left unrepresented certain additional skilled maintenance employees. Faced with these circumstances, the Board concluded that where there are nonconforming units it would not countenance the creation of any additional units.

In the instant case, any election limited to the voting group sought by the Petitioner would violate these principles. Even granting that the Petitioner now seeks only to include additional employees in the existing nonconforming unit rather than to create a new unit, the record clearly establishes that such an election would leave other residual classifications of employees unrepresented regardless of how the phlebotomists are categorized. Given these circumstances, a petition seeking to single out the classification of phlebotomist and PRN phlebotomist should be dismissed. ¹⁰

ORDER

IT IS ORDERED that the petition in this case be, and it hereby is, dismissed.

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⁸ The eight appropriate units are: (1) all registered nurses; (2) all physicians; (3) all professionals, except for registered nurses and physicians; (4) all technical employees; (5) all skilled maintenance employees; (6) all business office clerical employees; (7) all guards; and (8) all non-professional employees, except for technical employees, skilled maintenance employees, business office clerical employees, and guards. 54 Fed. Reg. at 16347, 29 C.F.R. at Sec. 103.30(a).

⁹ <u>St. John's Hospital</u>, 307 NLRB 767, 768 (1992), citing <u>Armstrong Rubber Co.,</u> 144 NLRB 1115, 1119 fn. 11 (1963); American Radiator Corp., 114 NLRB 1151, 1154-1155 (1955).

While the Petitioner stated at the hearing that it was prepared to proceed to an election in a broader voting group than it has sought in the petition, I find that, given the circumstances described above, it has not established that any such election could conform to the Board's Health Care Rule. As a result, I cannot order any such election. I find that it is incumbent upon the Petitioner, if it wishes to enlarge its existing unit, to file a petition that would conform to the Rule.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. If a party wishes to file a request for review electronically, guidance for E-filing can be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed. This request must be received by the Board in Washington by April 30, 2010.

Dated at Cleveland, Ohio this 16th day of April, 2010.

/s/ [Frederick J. Calatrello]

Frederick J. Calatrello Regional Director National Labor Relations Board Region 8